

REMARKS

Claims 1-47 remain pending in the present application. No amendments have been made in view of the relied on art, since Applicant believes that these claims overcome the art of record, as they stand. New claims 48-53 have been presented for consideration by the Examiner, as these claims are believed to be directed to patentable subject matter. Applicants believe that all of the claims are now allowable over the art of record.

The § 103 Rejections

The Examiner rejected Claims 1-47 under 35 USC 103(a) as being unpatentable over U.S. patent no. 3,690,898, issued to Partyka in view of U.S. patent no. 3,539,354, issued to Colvin; U.S. patent no. 4,562,079, issued to Herzing; U.S. patent no. 4,640,837 issued to Coleman; a book referred to as "Snacks and Sandwiches"; and an article entitled "Grilled Cheese: Plain and Simple." Applicant respectfully traverses. It is clear to Applicant that each reference does not apply to every one of the claims, although the Examiner has not provided such details within the discussion of the various references. Accordingly, Applicant will attempt to discuss the references in the manner which is most logically thought to have been contemplated by the Examiner with respect to the detailed limitations of the claims.

Initially, considering the limitations of claim 1, is important to understand that this claim encompasses coating at least a portion of the outermost farinaceous surfaces with a high solid fat index lipid mixture, thereby forming a layer of the coating material. It is noted that Partyka was addressed in detail in the amendment response of February 4, 2003. Moreover, the discussions of this reference, contained therein, remain applicable, but will not be fully repeated in the present response for purposes of brevity. As an example of these prior discussions, Partyka teaches the use of a hydrocolloid applied to the innermost major surfaces of confronting slices of bread that are used in the making of a sandwich having a filling. Claim 1, in contrast, applies a coating to at least a portion of the outermost surfaces of the product. In this sense, Partyka is considered to teach directly away from the present application and is directed to solving a problem that is not related to the limitations of claim 1 in any reasonable way. Specifically, this layer provides for a highly advantageous systematic reheating process which prevents heat accumulation proximate to the surface of the product to limit or avoid burning while conducting this heat into the interior of the product. Comparative testing has confirmed the effectiveness of the systematic reheating process of the present invention, as described at page 9, lines 19-24 of the specification. Accordingly, it is submitted that Applicants would have no motivation to look to Partyka, with regard to the limitations of claim 1, since a coating applied to inner sandwich surfaces fails to teach disclose or reasonably suggest anything with regard to product reheating, as contemplated by claim 1. For this reason alone, withdrawal of the Partyka reference is respectfully requested; accompanied by allowance of claim 1.

The Examiner admits that Partyka fails to disclose applying a high solid fat index lipid mixture and appears to rely on a number of modifications that are based on the art of record, in attempting to provide the required layer. Applicant respectfully disagrees. Initially, the Examiner asserts that Colvin teaches a coating of butter on a sandwich with the advantage of precluding moisture loss. Immediately thereafter, the Examiner states that fats having varying solid fat index are commercially available and that:

[I]t would have been obvious to one skilled in the art to use hard butter such as the one disclosed by

Herzing to obtain a more effective barrier due to the higher level of solid because the fat is applied to function as a barrier to prevent moisture migration rather than for flavoring

Applicant disagrees with this rationale for a number of reasons. Initially, it is noted that what Herzing teaches, as a whole, is a hard butter savory coating which comprises a high percentage of solids supported in a hard butter matrix. The purpose of the hard butter is to carry a large amount of solids in order to impart flavor with a pleasant texture and eating characteristics.

Claim 1 recites the application of a high solid fat index layer using a high solid fat index lipid mixture-- no additional ingredients are required. It is important to understand that Herzing fails to disclose such a layer. What Herzing teaches is the use of a matrix forming amount of hard butter. Applicant considers that this amount of hard butter is insufficient for the intended purpose. It is submitted that a reheatable product that supports a coating having only a matrix forming amount of hard butter will burn upon toaster reheating, since the primary properties of such a matrix layer are attributable to the added ingredients, rather than the hard butter. That is, the dominant percentage of added ingredients will burn, assuming that they are combustible. It is noted that the various examples given in the Herzing patent recite hard butter content in its matrix layer of only up to 40 percent. Therefore, the added ingredients comprise at least 60 percent of the matrix layer.

Moreover, Applicant finds no teaching, disclosure or suggestion in Herzing, or the remaining art of record, which would reasonably motivate one of ordinary skill in the art to modify the Herzing savory coating layer in a way which would result in the high solid fat index layer of the present invention. In this regard, it is also important to understand that the savory coating of Herzing is intended for consumption in the state in which it is formed on a product. It is not intended for reheating and would likely produce a fire in a toasting environment.

It appears that the Examiner believes that the proposed combination of references is reasonable on the basis of fat containing layers serving as a moisture barrier. This property is well-known to the extent that fats are hydrophobic. However, the mere presence of this characteristic is considered by Applicant to sweep far too broadly in support of modifying Partyka. That is, a myriad of alternative fat containing prior art layers are likely available which could support a modification on this basis. It is submitted, in this light, that the layer of Herzing has been impermissibly singled-out with the benefit of a full hindsight of the prior art and fails utterly with respect to supporting the very specific modification that is required in order to meet the limitations of claim 1. In this regard, it is well-settled that, in order to properly support a rejection under § 103, the prior art itself must objectively teach the proposed modification. Applicant finds no teaching in the art of record which reasonably suggests the layer that is encompassed by claim 1 in order to implement the highly advantageous reheating system brought to light by the present invention.

With regard to the foregoing, it is important to understand another problem with respect to the proposed combination. Specifically, the high solid fat index layer of the present invention is not savory, nor is it intended to be savory. Quite the contrary, this layer imparts an unpleasant eating characteristic if the product is consumed without being reheating, as intended. For this reason alone, Applicant submits that one of ordinary skill in the art would be motivated to avoid using the high solid index fat layer of claim 1 and, thereby, fail to appreciate the advantages that Applicant has discovered.

Moreover, as described at page 7, line 24, of the present application, this layer imparts an opaque appearance, which is generally undesired prior to being reheated. These differences serve to point out that claim 1 is directed to solving a problem that is completely unrelated to the problem that is solved by Herzing: Claim 1 is directed to producing a reheatable product, whereas Herzing is directed to producing a savory coating that is intended to be consumed "as-is." For these reasons standing on their own merit, it is submitted that Applicant would have no motivation to look to Herzing in order to modify the remaining art of record in the suggested manner.

In light of the foregoing, it is clear that the suggested modification of Partyka to include the savory hard butter layer of Herzing, which Applicant continues to believe is unreasonable, does not result in the method which is recited by claim 1. Applicant considers that the proposed modification would result in a product that is inoperable with respect to the intended purpose of producing a reheatable product. Accordingly, for all of the foregoing reasons, allowance of claim 1 is respectfully requested.

Claims 2-27 each depend either directly or indirectly from and therefore include the limitations of amended claim 1. Accordingly, it is respectfully submitted that each of these claims is also patentable over the art of record for at least the reasons set forth above with respect to claim 1. Further, each of these dependent claims places additional limitations on their parent and intermediate claims which, when considered in light of claim 1, further distinguish the claimed invention from the art of record.

For example, claim 3 recites reheating the reheatable product in a toasting environment to cause the high solid fat index layer to transfer heat into the interior of the food product by melting and resolidifying in a way which limits toasting of the outermost surfaces while absorbing into the product. The Examiner states that such controlled reheating properties are provided by a butter layer. Applicant disagrees that a butter layer or the Herzing savory coating will function in this way. In this regard, a butter layer was tested directly against the high solid fat index layer of the present invention in the aforementioned comparative testing. The butter coated sandwich exhibited burning while the sandwich coated with the layer of the present invention did not burn. Accordingly, for at least these reasons, allowance of claim 3 is respectfully requested.

As another example, claim 4 recites that the high solid fat index lipid is applied to form the outer high solid fat index layer having a thickness in the range of approximately 0.0041 inch to 0.039 inch. Claim 6 recites a layer thickness of approximately 1.32 inch, while claim 8 recites an application rate of approximately 0.2 to 0.3 grams per square inch. The Examiner asserts that it would be obvious to determine the thickness which would provide optimum protection for purposes of forming a moisture barrier. Initially, it is noted that Applicant considers that the art of record fails to disclose the contemplated layer *ab initio*. Further, Applicant is unable to find any teaching in the art of record, with respect to such layer thickness or application rate, in producing a reheatable product. In this regard, there is no reasonable certainty that a layer that is applied for serving as a moisture barrier would have a thickness or application rate that is suited to reheating, as taught by the present invention. In this light, it is respectfully submitted that claims 4, 6 and 8 are allowable.

As yet another example, claim 9 requires grilling and cooling of the product before application of the high solid fat index lipid coating. Applicant is unaware of this useful combination of steps in the prior art. For example, Colvin teaches

application of a different, butter layer only before grilling, while teaching nothing with respect to the highly advantageous high solid fat index layer of the present invention.

In a continuing example, claim 12 recites that the food product includes a product thickness and the coating step is performed to apply the outer high solid fat index layer at a coating thickness that is based, at least in part, on the product thickness. Claim 13 further recites increasing the coating thickness with relative increases in the product thickness. Applicant respectfully submits that the prior art is completely devoid of any teachings reasonably relating to these highly advantageous combinations.

Claims 14 and 15, in combination, recite sealing peripheral edge portions of opposing farinaceous slices to one another by applying a sealing bead of farinaceous paste to the innermost surface of a first one of the opposing farinaceous slices surrounding a filling, positioning the innermost surface of the second one of the farinaceous slices against the innermost surface of the first farinaceous slice along with the farinaceous paste disposed thereon to spread the farinaceous paste across the peripheral edge portion, and cooking the food product in a predetermined way which bonds the first and second slices to one another with the sealing paste. Applicant finds no teaching or reasonable suggestion with regard to the use of a farinaceous paste in Partyka in this manner. Claim 16 adds a further requirement that the farinaceous paste is a mixture of approximately 46% flour and 54% water by weight upon application to the opposing farinaceous slices while claim 17 recites that the sealing bead includes a weight of approximately 8 grams upon application. In this regard, Partyka teaches the use of a hydrocolloid adhesive. The Examiner again states that it is known in the art to use flour as an adhesive and it would have been obvious to one of ordinary skill in the art to use alternative ingredients to carry out the same function. It appears to Applicant that the Examiner is relying on Official Notice in order to make out this aspect of the claimed combination. If this is the case, Applicant respectfully traverses the rejection on these grounds and requests an express showing of documentary proof, or an affidavit, as required by MPEP § 2144.03, in the event the rejection is maintained on these grounds. Thus, for at least the foregoing reasons, Applicant believes that claims 15-17 are patentable.

Claim 18 depends directly from claim 1 and requires dispersing additional solids in the high solid fat index lipid mixture prior to the coating step. Claim 19 depends directly from claim 18 and further recites that the additional solids include particles formed from a farinaceous mixture that is used to form the outermost farinaceous layer. In claim 20, prior to the coating step, the food product is grilled to provide a desired appearance of the outermost surfaces, and prior to dispersing the particles in the high solid fat index lipid mixture, the particles are treated in a way that is intended to maintain the desired appearance of the coated portions of the outermost surfaces when the food product is reheated in a toasting environment. The Examiner relies on Coleman with respect to these limitations. Applicant respectfully disagrees. Initially, it is noted that Coleman is directed to producing a browned appearance of a product that is cooked in a microwave oven. Claim 20, however, is directed to maintaining an appearance, subject to a toasting environment, that is previously produced through grilling. Applicant considers that Coleman teaches nothing in this regard at least for the reasons that (1) the Coleman product is not grilled prior to microwave heating and (2) Coleman is not directed to maintaining a previously produced appearance, but rather to producing a completely new appearance. Accordingly, for at least these reasons, Applicant respectfully submits that these claims are allowable over the art of record in any reasonable combination.

As another example, claim 22 recites forming a peripheral edge portion of the product including the outermost farinaceous layer in way that is intended to limit burning of the peripheral edge portions of the food product while reheating in a toasting environment. One exemplary configuration is shown in Figure 5 of the present application. This feature is considered to be highly advantageous and is heretofore unknown by Applicant with respect to the prior art. Applicant finds no discussion of this feature in the outstanding Office Action.

As still another example, claim 23 requires, prior to the coating step, grilling the food product to provide a desired appearance, and formulating the coating in a way that is intended to maintain the desired appearance when the food product is reheated in a toasting environment. As discussed above, this feature is considered to be highly advantageous and is heretofore unknown by Applicant with respect to the prior art.

Claim 24 recites inclusion of a hard butter, maltodextrin and added solids in the highly advantageous coating mixture of the present invention. Claim 25 further limits the added solids to include particles formed from the same farinaceous mixture from which the outermost farinaceous layer is also formed. Claim 26 further includes the steps, prior to the coating step, of grilling the food product to provide a desired appearance, and preparing the particles in a way that is intended to maintain the desired appearance when the food product is reheated. Applicant is unaware of these features in the prior art. It is considered that the mere suggestion of the use, for example, of bread crumbs in the Coleman and "Snacks and Sandwiches" references fails to reasonably teach, disclose or suggest the claimed method, particularly in view of the heretofore unknown and highly advantageous reheating characteristics of the high solid fat index layer of the present invention. Moreover, it is noted that the bread crumbs are added based on the characteristics of this reheating layer itself, as described, for example, at page 7, lines 21-26 of the present application, in view of the pre-reheated, opaque appearance of the layer.

Claim 27 recites a reheatable food product produced by the method of Claim 1. It is respectfully submitted that the art of record, in any reasonable combination, is devoid of such a product.

Turning now to the rejection of independent claim 28 a method is recited in which cooking the reheatable food product is performed to provide a desired appearance of the outermost surfaces. A coating mixture is mixed which is directed to causing the desired appearance of the product to be generally maintained as a result of exposure to a toaster environment including the step of adding particles to the mixture that are intended to enhance a post reheating appearance after the food product is reheated. At least portions of the outermost surfaces are then coated with the coating mixture. Applicant is unable to find any teaching, disclosure or suggestion in the art of record, in any reasonable combination, relating to a coating mixed that is used to maintain a desired, cooked appearance of a product. Thus, for at least the foregoing reasons, Applicant believes that claim 28 is patentable.

Claim 29 is an independent claim which reflects the limitations of claim 1, but in apparatus form. Accordingly, the arguments made above with respect to the patentability of amended claim 1 over the art of record reference are equally applicable with respect to the patentability of claim 29. Accordingly, for at least these reasons, allowance of amended claim 29 is respectfully requested.

Claims 30-45 each depend either directly or indirectly from and therefore include the limitations of claim 29. Accordingly, it is respectfully submitted that each of these claims is also patentable over the art of record for at least the reasons set forth above with respect to claim 29. Further, each of these dependent claims places additional limitations on their parent and intermediate claims which, when considered in light of claim 29, further distinguish the claimed invention from the art of record.

For example, claims 32 and 33 include limitations which are similar to those present in claims 4 and 6, respectively, but in method form. It is submitted that claims 32 and 33 are each allowable at least for the reasons given above with respect to claims 4 and 6. Accordingly, allowance of claims 32 and 33 is respectfully requested.

Claims 38 and 39, in combination, recite a sealant substantially surrounding the filling to bond the pair of outermost farinaceous layers to one another in a way that is intended to seal the filling between the outermost farinaceous major layers wherein the sealant is formed from a farinaceous paste. Claim 40 adds a further requirement that the farinaceous paste is a mixture of approximately 46% flour and 54% water by weight upon application to the opposing farinaceous slices. Applicant finds no teaching or reasonable suggestion with regard to the use of a farinaceous paste in the art of record. In this regard, the Examiner admits that Partyka fails to disclose the use of a sealant comprising flour and water. The Examiner then states that Partyka teaches a different sealant material and suggests that it is known in the art to use flour as an adhesive and it would have been obvious to one of ordinary skill in the art to use alternative ingredients to carry out the same function. It appears to Applicant that the Examiner is relying on Official Notice in order to make out this aspect of the claimed combination. If this is the case, Applicant respectfully traverses the rejection on these grounds and requests an express showing of documentary proof, or an affidavit, as required by MPEP § 2144.03, in the event the rejection is maintained on these grounds. Thus, for at least the foregoing reasons, Applicant believes that claims 38-40 are patentable.

As a further example, claims 41-43 include limitations which are similar to those present in claims 18-20, respectively, but in method form. It is submitted that claims 41-43 are each allowable at least for the reasons given above with respect to claims 18-20. Accordingly, allowance of claims 41-43 is respectfully requested.

As another example, claim 44 includes limitations which are similar to those present in claim 22, but in method form. It is submitted that claim 44 is allowable at least for the reasons given above with respect to claim 22. Accordingly, allowance of claim 44 is respectfully requested.

Claim 45 recites that the coating mixture includes a hard butter, maltodextrin and particles formed from a farinaceous mixture from which the outermost farinaceous major layers are also formed. Applicants are unaware of these features in the art of record.

Dependent claim 46 recites that the high solid fat index layer operates to transfer heat into the interior of the food product, during reheating, by melting and resolidifying in a way which limits toasting of the outermost surfaces while absorbing into the product. This claim reflects the limitations of claim 3, discussed above, but in apparatus form. Accordingly, the arguments asserted above on behalf of claim 3 are equally applicable with respect to claim 46. Accordingly, allowance of claim 46 is respectfully requested.

Claim 47 recites that the coating is applied to the coated portion of the outermost surfaces at a rate of approximately 0.2 to 0.3 grams per square inch. This claim reflects the limitations of claim 8, discussed above, but in apparatus form. Accordingly, the arguments asserted above on behalf of claim 8 are equally applicable with respect to claim 47. Accordingly, allowance of claim 47 is respectfully requested.

New claims 48-53 have been added with the full support of the specification for consideration by the Examiner and are believed by Applicant to be allowable over the art of record, in any reasonable combination.

For the foregoing reasons, it is respectfully submitted that all of the Examiner's objections have been overcome and that the application is in condition for allowance. Hence, allowance of these claims and passage to issue of the application are solicited.

If the Examiner has any questions concerning this case, the Examiner is respectfully requested to contact Mike Pritzkau at 303-410-9254.

Respectfully submitted,



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